IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 799 of 1999

in

SPECIAL CIVIL APPLICATIONNo 3422 of 1998

with

CIVIL APPLICATION NO. 5275 OF 1999

For Approval and Signature:

Hon'ble CHIEF JUSTICE MR D.M. DHARMADHIKARI
and
Hon'ble MR.JUSTICE J.M.PANCHAL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

K S LUHANA

Versus

STATE OF GUJARAT

Appearance:

MR JF SHAH for Appellant

NOTICE SERVED for Respondent No. 1

MR MUKESH R SHAH for Respondent No. 3

CORAM : CHIEF JUSTICE MR D.M. DHARMADHIKARI
and
MR.JUSTICE J.M.PANCHAL

Date of decision: /07/2000

C.A.V. JUDGEMENT (PER D.M. DHARMADHIKARI, C.J.)

#. The appellant is working on the post of Laboratory Technician in the services of State of Gujarat. The dispute raised before the learned Single Judge by the appellant was about his alleged wrong pay fixation in the revised scale of pay. The learned Single Judge by the impugned order dated 10th March 1999, rejected the claim made by the appellant that he, being B.Sc. pass with Training in a Private Laboratory and having obtained a certificate of completion of such Training Course, was entitled for pay fixation in the revised scale of pay, under Entry 91 of the Gujarat Civil Services (Revision of Pay) Rules 1987 (for short `Revision of Pay Rules of 1987). The said Entry 91 provides in its Sub-Entries (i) and (ii) scales of pay for Laboratory Technician. Under Sub-Entry (i) of Entry 91, those Technicians having to their credit degree of B.Sc. with Training or B.Sc. with second class or B.Sc. with three years experience are granted revised scale of pay of Rs.1700-2300. Under Sub-Entry (ii) of Entry 91, such Technicians, who do not possess the above educational qualification and training or experience, are recommended revised pay scale of Rs. 1350-2200. The relevant Entry 91 in the Revision of Pay Rules, 1987 needs to be reproduced as under:-

Sr.No.	Designation	Present scale	Revised scale	Remarks
91	Laboratory Technician	(i)425-700	(i) 1400-2300	(i) B.Sc. with training or B.Sc. with Second Class or B.Sc. with three years experience.
		(ii)380-600	(ii)1350-2200	(ii) For others.

#. The case of the appellant is that at the time of his entry to the service, he had produced certificate of

Training from Sarvodaya Laboratories, which is filed as Annexure A with the petition. He is also holder of B.Sc. degree. The appellant was appointed on the post of Laboratory Technician in the pre-revised scale of Rs. 425-700, and on revision of pay, he was placed in the pay scale of Rs. 1400-2300. The Chief District Health Officer, Godhra passed an order on 29-11-1990 stating that grant of revised scale of pay of Rs. 1400-2300 to the appellant was an error, as he is plain B.Sc. with no Training from any recognised Institution. The above order was confirmed in Appeal by the District Development Officer, Godhra (respondent No.2).

#. The case of the appellant before the learned Single Judge and in this Appeal is that relevant Entry 91 Sub-Entry (i) (quoted supra) entitles grant of revised scale of pay to the Laboratory Technician possessing degree of B.Sc. with Training. There is no specification of any particular type of Training which alone will be recognised for grant of revised scale of pay. It is submitted that the appellant got appointment on the basis of his degree in B.Sc. with Training in Sarvodaya Laboratories, of which a certificate was produced. The appellant was appointed in the pre-revised scale of pay of Rs. 425-700 of which appropriate revised scale in Revision of Pay Rules, 1987 is Rs. 1400-2300. His pay fixation, therefore, was earlier rightly done, and without giving him opportunity of hearing, respondent No.3 could not have passed the impugned order reducing his scale of pay in the revised scale of pay of Rs. 1350-2200.

#. Learned counsel appearing on behalf of the State of Gujarat and the authorities representing the Health and Family Welfare Department (respondent 1 herein) submits that it is not the question of pay fixation of the appellant as an individual, but it is a question of policy and implementation of Revision of Pay Rules, 1987 in respect of all Laboratory Technicians possessing Training. It is submitted that in the relevant Entry 91, the word `Training' has to be given a reasonable meaning to mean `training as recognised in recruitment Rules' and `training from a recognised Institute'. It is pointed out that Training from an unrecognised Institution like Sarvodaya Laboratories cannot be recognised for grant of revised scale of pay.

#. We have given our thoughtful consideration to the submission made at the Bar and also looked into the relevant Entry. The learned Single Judge appears to be right in observing that the Entry 91 in the Revision of

Pay Rules, 1987 had to be construed in the light of the recruitment Rules. The learned Single Judge has referred to relevant recruitment Rule 10A which provides for training and modes of appointment to the post of Laboratory Technician by direct selection or by promotion. Under the Rules, to be eligible for direct selection, a candidate is required to possess a degree in Science, preferably, with Micro Biology as a principal subject. For appointment by promotion, a candidate must have the S.S.C. examination or its equivalent examination with Physics and Chemistry as principal subjects. The Rule further requires that he must have successfully received training course for one year as a Laboratory Technician in any of the Medical Colleges. Entry 91 of the Revision of Pay Rules, 1987 with use of specific word, `Training' in it has to be understood and construed reasonably in the light of the recruitment Rules. In the recruitment Rules, the training for promotion to the post of Laboratory Technician is described to be a course of training of one year as Laboratory Technician from any of the Medical Colleges. The same meaning, therefore, has to be assigned to word `Training' in Entry 91 Sub-Entry (i). The appellant was appointed by direct recruitment and was given unrevised scale of pay of Rs. 425-700 as Laboratory Technician, but as per the Revision of Pay Rules, 1987, the higher scale of pay of Rs. 1400-2300 is to be given only to Technicians having B.Sc. degree with training to their credit. Therefore, the said revised scale of pay could not have been granted to the appellant. No doubt, he has obtained a certificate of having completed a training course, but in the certificate produced by the appellant, there is no mention of any training period and it is not from any Medical College. The certificate of training obtained by him is from a private Institute named Sarvodaya Laboratories. Such training cannot be recognised for the purpose of pay revision and grant of higher scale of pay of Rs. 1400-2300. The authorities (respondents Nos. 2 and 3), therefore, rightly held the appellant to be entitled to revised scale of pay of Rs. 1350-2200 as scale of pay for Technicians who are plain B.Sc. with no training. The appellant cannot claim the revised scale of Rs. 1400-2300 because, although he possesses degree of B.Sc., but has no training as contemplated in the recruitment Rules. The learned Single Judge in our opinion, therefore, committed no error in rejecting the claim of the appellant for the revised scale of pay of Rs. 1400-2300.

#. So far as the grievance raised on denial of principles of natural justice is concerned, it is true

that before reducing the scale of pay by the impugned pay fixation order, the appellant was not given a show cause notice or hearing. But it appears that it is for the aforesaid reason that the learned Single Judge has granted partial relief to the appellant by directing the respondents not to make any recovery towards difference of salary for the period prior to the passing of the order dated 29-11-1990, whereby his pay fixation was changed and his scale was reduced.

#. The learned Single Judge and this Court has considered the claim of the appellant and has found no merit in his grievance. We do not consider it necessary now to remand the matter to the authorities for grant of opportunity of hearing to the appellant in the matter of his pay fixation, as we have negatived his claim after hearing his counsel.

#. As a result of the discussion aforesaid, the Appeal fails and it is accordingly dismissed.

In the circumstances, there shall be no order as to costs.

As the main Appeal is dismissed, the Civil Application for stay does not survive and the same is hereby disposed of as having become infructuous.

(D.M. DHARMADHIKARI, C.J.)

(J.M. PANCHAL, J)

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